

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 454

BY HART

AN ACT

RELATING TO TAXATION POLICIES; TO PROVIDE A SHORT TITLE; TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 63-3004, IDAHO CODE, TO REVISE THE DEFINITION OF "INTERNAL REVENUE CODE"; AMENDING SECTION 63-3011, IDAHO CODE, TO ADD A DEFINITION AND TO REVISE THE DEFINITION OF "GROSS INCOME"; AMENDING SECTION 63-3024, IDAHO CODE, TO REVISE THE TAX IMPOSED ON INDIVIDUALS, TRUSTS AND ESTATES; AMENDING SECTION 63-3029, IDAHO CODE, TO PROVIDE THAT A CREDIT SHALL NOT BE ALLOWED FOR INCOME TAXES PAID TO ANOTHER STATE, TERRITORY, POSSESSION OR DISTRICT ON EARNED INCOME THAT WOULD OTHERWISE BE EXEMPT FROM IDAHO TAXABLE INCOME; AMENDING SECTION 63-3030, IDAHO CODE, TO REVISE REQUIREMENTS FOR PERSONS HAVING TO FILE INCOME TAX RETURNS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3619, IDAHO CODE, TO INCREASE THE RATE OF THE SALES TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO INCREASE THE RATE OF THE USE TAX; AMENDING SECTION 63-3638, IDAHO CODE, TO REVISE REVENUE SHARING PROVISIONS; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. SHORT TITLE. This act shall be known and cited as the "Income Tax Reform Act of 2010."

SECTION 2. LEGISLATIVE INTENT. In 1909, as reported by the New York Times, ninety percent of the American people supported the proposed constitutional amendment to the United States Constitution to provide for an income tax as the American people understood "income" to mean only profit from business and profit from investment, or otherwise thought of in the vernacular of the day as a tax on the income from accumulated wealth.

On April 29, 1910, the New York Times editorialized:

"Both parties favor it. Every voter who has no income is in favor of taxing everybody -- man, woman or child -- who has an income. And every legislator who is afraid of his constituents is in favor of the most popular proposal in sight..."

And on March 4, 1911, at page 10, the New York Times also editorialized:

"A tax on income may be oppressive and unwise but it is not destructive. The capital producing the income remains."

The purpose of the income tax amendment to the United States Constitution was to bring tax relief to wage earners by way of shifting the tax burden off of tariffs and consumption by imposing an income tax on the profit from business and the profit from investment.

Senator Borah of Idaho, the leading Republican senator in favor of an income tax, stated in the Congressional Record: "While the expenses of the National Government are largely caused by the protection of property, it is but right to require property to contribute to their payment. It will not

1 do to say that each person consumes in proportion to his means. That is not
 2 true. Everyone can see that the consumption of the rich does not bear the
 3 same relation to the consumption of the poor, that the income of the one does
 4 to the wages of the other." 44 Congressional Record, pg. 1680 (1909).

5 Senator Bailey of Texas, the leading Democrat senator in favor of an
 6 income tax stated: "Although it is not pertinent to this discussion, I have
 7 no hesitation in declaring that a tax on any useful occupation can not be
 8 defended in any forum of conscience or of common sense. To tax a man for
 9 trying to make a living for his family is such a patent and gross injustice
 10 that it should deter any legislation from perpetrating it.... I do not
 11 hesitate to say that every occupation tax in America ought to be repealed,
 12 because it is a tribute exacted by sovereignty from a man because of his
 13 effort to make a living for himself and his family." 44 Congressional Record,
 14 pg. 1702 (1909).

15 Senator Brown of Nebraska, the author of the Income Tax Amendment said:
 16 "It is the theory of the friends of the income-tax proposition that property
 17 should be taxed and not individuals." 44 Congressional Record, pg. 1570
 18 (1909).

19 It has been well settled in American History that a tax on a person's
 20 wages or salary is a capitation tax, a form of a direct tax.

21 On July 5, 1909, just prior to its vote on the Sixteenth Amendment, the
 22 United States Senate rejected an attempt by Senator McLaurin, and a second
 23 attempt by Senator Bristow to provide authority for a direct tax, in the
 24 form of an income tax, exempted from the apportionment requirement. 44
 25 Congressional Record, pg. 4120-21 (1909).

26 The first state to ratify the Sixteenth Amendment was Alabama. And
 27 when the Alabama Legislature debated the ratification of the Sixteenth
 28 Amendment, it was reported on the front page of the New York Times, August 3,
 29 1909, that the Sixteenth Amendment would not provide for a tax on salaries.

30 All the parties of the first two income tax cases that were adjudicated
 31 by the United States Supreme Court (Brushaber 240 U.S. 1 (1916) and Stanton
 32 240 U.S. 103 (1916)) argued that the Sixteenth Amendment created a new
 33 tax, that being a direct tax in the form of an income tax exempted from the
 34 apportionment rule for direct taxes.

35 In these first two cases the United States Supreme Court ruled that
 36 the Sixteenth Amendment barred from future use the logic used by the United
 37 States Supreme Court in the 1895 Pollock v. Farmers Home Loan Bank Co. 157
 38 U.S. 429 (1894); reh. 158 U.S. 601 (1895) where an income tax, that conformed
 39 to all the criteria of an indirect tax, was declared to be an unapportioned
 40 direct tax, and consequently unconstitutional.

41 The United States Supreme Court went so far as to say (in Stanton) that
 42 the Sixteenth Amendment "created no new tax."

43 There is no evidence that can be found in any congressional report,
 44 congressional writing, congressional debate, law journal, political
 45 economy journal, economic journal, newspaper nor any other writing from
 46 the time of the debates on the Sixteenth Amendment that can be used to argue
 47 that Congress or the American people intended to create a new tax that would
 48 directly tax the wages or salaries of the American people.

49 Therefore, because there is no evidence that can be found anywhere
 50 to justify the present direct capitation tax on the wages or salaries of

Idahoans, as Idaho's income tax is to conform to the federal income tax, which is authorized by the Sixteenth Amendment, it is the intention of the Legislature of the state of Idaho to conform Idaho's income tax statutes to the American peoples' original intent for the Sixteenth Amendment where income taxes shall be limited to indirect taxes on profit from business and profit from investment otherwise referred to at the time of the debates on the Sixteenth Amendment as a tax on the income from accumulated wealth.

SECTION 3. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the seventeenth day of February, 2009.

(b) Except as specifically provided in this title pProvisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 4. That Section 63-3011, Idaho Code, be, and the same is hereby amended to read as follows:

63-3011. GROSS INCOME. (a) The term "income" shall mean:

(1) Interest from bonds, notes, money at interest, and for all debts due the person to be taxed except interest from notes or bonds of this state and notes or bonds of any political subdivision of this state.

(2) Dividends, other than stock dividends paid in new stock of the company issuing the same, on shares in all corporations and joint stock companies organized under the laws of any state, territory or nation.

(3) Dividends, other than stock dividends paid in new stock of the partnership, limited liability company, association, or trust issuing the same, on shares in partnerships, limited liability companies, associations, or trusts in the beneficial interest in which is represented by the transferable shares.

(4) All other gain or profit derived from any sale, exchange, transfer or other conversion of property, commodities and/or services. Provided however, that in any instance of compensation, remuneration or other consideration including, but not by way of limitation, wages, salaries, commissions, bonuses, benefits or other consideration, received in exchange for labor or services personally performed and exchanged by the recipient of such remuneration and consideration for the basis for the time, effort, labor, energy, skill expertise, knowledge and/or other intangible personal property or benefit exchanged by the recipient and deriving to the payor shall be presumed to be equal to the remuneration and consideration paid therefor; and

(b) The term "gross income" means gross income as defined in section 61(a) of the Internal Revenue Code; provided however, that any revenue derived from and attributable to the exercise of any fundamental right shall be excluded from "taxable income" as defined by this chapter.

SECTION 5. That Section 63-3024, Idaho Code, be, and the same is hereby amended to read as follows:

63-3024. INDIVIDUALS' TAX AND TAX ON ESTATES AND TRUSTS. For taxable year 2001~~10~~, and each taxable year thereafter, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required by this chapter to file a return.

(a) The tax imposed upon individuals, trusts and estates shall be computed at ~~the following rates:~~ seven and one-half percent (7.5%) of Idaho taxable income.

~~When Idaho taxable income is:~~

~~The rate is:~~

~~Less than \$1,000~~

~~One and six tenths percent (1.6%)~~

~~\$1,000 but less than \$2,000~~

~~\$16, plus three and six tenths percent (3.6%) of the amount over \$1,000~~

~~\$2,000 but less than \$3,000~~

~~\$52, plus four and one tenth percent (4.1%) of the amount over \$2,000~~

~~\$3,000 but less than \$4,000~~

~~\$93, plus five and one tenth percent (5.1%) of the amount over \$3,000~~

~~\$4,000 but less than \$5,000~~

~~\$144, plus six and one tenth percent (6.1%) of the amount over \$4,000~~

~~\$5,000 but less than \$7,500~~

~~\$205, plus seven and one tenth percent (7.1%) of the amount over \$5,000~~

~~\$7,500 but less than \$20,000~~

~~\$383, plus seven and four tenths percent (7.4%) of the amount over \$7,500~~

~~Over \$20,000~~

~~\$1,308, plus seven and eight tenths percent (7.8%) of the amount over~~

~~\$20,000~~

For taxable year 2000 and each year thereafter, the state tax commission shall prescribe a factor which shall be used to compute the Idaho income tax brackets provided in subsection (a) of this section. The factor shall provide an adjustment to the Idaho tax brackets so that inflation will not result in a tax increase. The Idaho tax brackets shall be adjusted as follows: multiply the bracket amounts by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted brackets will apply divided by the consumer price index for calendar year 1998). For the purpose of this computation, the consumer price index for any calendar year is the average of the consumer price index as of the close of the twelve (12) month period for the immediately preceding calendar year, without regard to any subsequent adjustments, as adopted by the state tax commission. This adoption shall be exempt from the provisions of chapter 52, title 67, Idaho Code. The consumer price index shall mean the consumer price index for all U.S. urban consumers published by the United States department of labor. The state tax commission shall annually include the factor as provided in this subsection to multiply against Idaho taxable income in the brackets above to arrive at that year's Idaho taxable income for tax bracket purposes.

(b) In case a joint return is filed by husband and wife pursuant to the provisions of section 63-3031, Idaho Code, the tax imposed by this section shall be twice the tax which would be imposed on one-half (1/2) of the aggregate Idaho taxable income. For the purposes of this section, a return of a surviving spouse, as defined in section 2(a) of the Internal Revenue Code, and a head of household, as defined in section 2(b) of the Internal Revenue Code, shall be treated as a joint return and the tax imposed shall be twice the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

(c) In the case of a trust that is an electing small business trust as defined in section 1361 of the Internal Revenue Code, the special rules for taxation of such trusts contained in section 641 of the Internal Revenue Code shall apply except that the maximum individual rate provided in this section shall apply in computing tax due under this chapter.

~~(d) The state tax commission shall compute and publish Idaho income tax liability for taxpayers at the midpoint of each bracket of Idaho taxable income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000), rounding such calculations to the nearest dollar. Taxpayers having income within such brackets shall file returns based upon and pay taxes according to the schedule thus established. The state tax commission shall promulgate rules defining the conditions upon which such returns shall be filed.~~

SECTION 6. That Section 63-3029, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029. CREDIT FOR INCOME TAXES PAID ANOTHER STATE. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, estate or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's, estate's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter. A credit shall not be allowed for income taxes paid to another state, territory, possession or district on earned income that would otherwise be exempt from Idaho taxable income as defined in this chapter.

(2) For purposes of this section:

(a) "State" shall include any state of the United States, the District of Columbia, or any possession or territory of the United States.

(b) Except as provided in subsection (3)(a)(i) of this section, "individual" shall include estates and trusts.

(c) References to "domiciled in" shall mean "a resident of" for purposes of computing the credit for trusts and estates.

(3) (a) Except as provided in subsection (3)(b) of this section:

(i) The credit provided under this section to an individual shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other state as modified by

1 this chapter bears to the adjusted gross income of the taxpayer as
2 modified by this chapter.

3 (ii) The credit provided under this section to an estate or trust
4 shall not exceed the proportion of the tax otherwise due under this
5 chapter that the amount of the federal total income of the estate
6 or trust derived from sources in the other state and taxed by that
7 state bears to the federal total income of the estate or trust.
8 "Federal total income of the estate or trust derived from sources
9 in the other state" shall be determined as provided under section
10 63-3026A, Idaho Code, as if the estate or trust was a nonresident.

11 (b) When tax is paid to another state on income of an S corporation,
12 partnership, limited liability company, estate or trust, the
13 limitation calculated in subsection (3)(a) of this section with
14 respect to that income shall be based on the proportion that the
15 individual taxpayer's share of the entity's taxable income correctly
16 reported to the other state under the laws of the other state bears to
17 the individual's adjusted gross income. This limitation shall apply
18 whether the tax is paid to the other state by the individual or by the S
19 corporation, partnership, limited liability company, estate or trust.

20 (c) The credit provided under this section shall further be limited to
21 the tax paid to the other state.

22 (4) To substantiate the credit allowed under this section, the state
23 tax commission may require a copy of any receipt showing payment of income
24 taxes to the other state or a copy of any return or returns filed with such
25 other state, or both.

26 (5) No credit allowed under this section shall be applied in
27 calculating tax due under this chapter if the tax upon which the credit
28 is based has been claimed as a deduction, unless the tax is restored to income
29 on the Idaho return.

30 (6) The credit shall not be allowed if such other state allows a credit
31 against taxes imposed by such state for taxes paid or payable under this
32 chapter.

33 (7) For purposes of this section an income tax imposed on an S
34 corporation, partnership, limited liability company, estate or trust
35 includes:

36 (a) A direct tax imposed upon the income for the taxable year of the S
37 corporation, partnership, limited liability company, estate or trust;
38 and

39 (b) An excise or franchise tax that is measured by the income for the
40 taxable year of the S corporation, partnership, limited liability
41 company, estate or trust.

42 (8) For purposes of subsection (7) of this section, an excise or
43 franchise tax is "measured by income" only if the statute imposing the excise
44 or franchise tax provides that the base for the tax:

45 (a) Includes:

46 (i) Revenue from sales;

47 (ii) Revenue from services rendered; and

48 (iii) Income from investments; and

49 (b) Permits a deduction for the cost of goods sold and the cost of
50 services rendered.

1 (9) A part-year resident is entitled to a credit, determined in the
2 manner prescribed by the state tax commission, for income taxes paid to
3 another state in regard to income which is:

4 (a) Earned while the taxpayer is domiciled or residing in this state;
5 and

6 (b) Subject to tax in such other state.

7 (10) If the interest in an S corporation, partnership, limited
8 liability company, estate or trust was held for less than the entire taxable
9 year, the share attributable to the individual shall be allocated in the same
10 manner as for federal purposes.

11 SECTION 7. That Section 63-3030, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 63-3030. PERSONS REQUIRED TO MAKE RETURNS OF INCOME. (a) Returns with
14 respect to taxes measured by income in this chapter shall be made by the
15 following:

16 (1) Every resident individual required to file a federal return under
17 section 6012(a)(1) of the Internal Revenue Code who has an Idaho taxable
18 income greater than six hundred dollars (\$600).

19 (2) Any nonresident individual having for the current taxable year
20 a gross income from Idaho sources in excess of ~~two thousand five~~ six
21 ~~hundred dollars (\$2,500)~~ hundred dollars (\$2,500600), or any part-year resident individual
22 having for the current taxable year a gross income from all sources
23 while domiciled in or residing in Idaho, and from Idaho sources while
24 not domiciled in and not residing in Idaho, which in total are in excess
25 of ~~two thousand five~~ six hundred dollars (~~\$2,500~~ 600);

26 (3) Every corporation which is transacting business in this state,
27 authorized to transact business in this state or having income
28 attributable to this state, unless exempt from the tax imposed in this
29 chapter;

30 (4) Every corporation reporting as an S corporation pursuant to
31 Internal Revenue Code sections 1361 through 1379 to the federal
32 government, which is transacting business in this state, or is
33 authorized to transact business in this state. A corporation which is
34 reporting as an S corporation to the federal government must report to
35 the state of Idaho as an S corporation for and during the same period
36 or periods in which its election to report as such a corporation is
37 effective for federal tax purposes and must identify itself as an S
38 corporation on its income tax return filed with this state;

39 (5) Every estate, the residence of which estate is in Idaho, having
40 a gross income of six hundred dollars (\$600) or more for the current
41 taxable year;

42 (6) Every estate, the residence of which is in a state other than
43 Idaho, having a gross income from Idaho sources in excess of six hundred
44 dollars (\$600);

45 (7) Every trust required to file a federal return under the Internal
46 Revenue Code, the residence of which trust is in Idaho, having a gross
47 income of one hundred dollars (\$100) or more for the current taxable
48 year;

(8) Every trust required to file a federal return under the Internal Revenue Code, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of one hundred dollars (\$100);

(9) Every partnership which transacts business in this state. Such return shall be a supplemental information return and shall include the names and addresses of the persons who would be entitled to share in the net income of the partnership if distributed and the amount of the distributive share of each person. Such return shall be signed by one

(1) of the partners.

(b) Returns of fiduciaries and receivers:

(1) Fiduciaries and receivers shall file returns with the state tax commission in accordance with the provisions of section 6012(b) of the Internal Revenue Code.

SECTION 8. That Section 63-3619, Idaho Code, be, and the same is hereby amended to read as follows:

63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby imposed upon each sale at retail at the rate of ~~six~~ eight and one-fourth percent (~~6~~8.25%) of the sales price of all retail sales subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, installment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.

(b) The tax hereby imposed shall be collected by the retailer from the consumer.

(c) The state tax commission shall provide schedules for collection of the tax on sales which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system prescribed which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting the tax.

(d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

(e) The tax commission may by rule provide that the amount collected by the retailer from the customer in reimbursement of the tax be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales slip or other proof of sale.

(f) The taxes imposed by this chapter shall apply to the sales to contractors purchasing for use in the performance of contracts with the United States.

SECTION 9. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after ~~October~~ July 1, 2006¹⁰, for storage, use, or other consumption in this state at the rate of ~~six~~ eight and one-fourth percent (~~6~~8.25%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale

1 certificate relieves the person selling the property from the burden of
2 proof only if taken from a person who is engaged in the business of selling
3 or renting tangible personal property and who holds the permit provided for
4 by section 63-3620, Idaho Code, or who is a retailer not engaged in business
5 in this state, and who, at the time of purchasing the tangible personal
6 property, intends to sell or rent it in the regular course of business or is
7 unable to ascertain at the time of purchase whether the property will be sold
8 or will be used for some other purpose. Other than as provided elsewhere in
9 this section, when a resale certificate, properly executed, is presented to
10 the seller, the seller has no duty or obligation to collect sales or use taxes
11 in regard to any sales transaction so documented regardless of whether the
12 purchaser properly or improperly claimed an exemption. A seller so relieved
13 of the obligation to collect tax is also relieved of any liability to the
14 purchaser for failure to collect tax or for making any report or disclosure
15 of information required or permitted under this chapter.

16 The resale certificate shall bear the name and address of the purchaser,
17 shall be signed by the purchaser or his agent, shall indicate the number of
18 the permit issued to the purchaser, or that the purchaser is an out-of-state
19 retailer, and shall indicate the general character of the tangible personal
20 property sold by the purchaser in the regular course of business. The
21 certificate shall be substantially in such form as the state tax commission
22 may prescribe.

23 (f) If a purchaser who gives a resale certificate makes any storage or
24 use of the property other than retention, demonstration or display while
25 holding it for sale in the regular course of business, the storage or use is
26 taxable as of the time the property is first so stored or used.

27 (g) Any person violating any provision of this section is guilty of a
28 misdemeanor and punishable by a fine not in excess of one hundred dollars
29 (\$100), and each violation shall constitute a separate offense.

30 (h) It shall be presumed that tangible personal property shipped or
31 brought to this state by the purchaser was purchased from a retailer, for
32 storage, use or other consumption in this state.

33 (i) It shall be presumed that tangible personal property delivered
34 outside this state to a purchaser known by the retailer to be a resident
35 of this state was purchased from a retailer for storage, use, or other
36 consumption in this state. This presumption may be controverted by evidence
37 satisfactory to the state tax commission that the property was not purchased
38 for storage, use, or other consumption in this state.

39 (j) When the tangible personal property subject to use tax has been
40 subjected to a general retail sales or use tax by another state of the United
41 States in an amount equal to or greater than the amount of the Idaho tax,
42 and evidence can be given of such payment, the property will not be subject
43 to Idaho use tax. If the amount paid the other state was less, the property
44 will be subject to use tax to the extent that the Idaho tax exceeds the tax
45 paid to the other state. For the purposes of this subsection, a registration
46 certificate or title issued by another state or subdivision thereof for a
47 vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code,
48 shall be sufficient evidence of payment of a general retail sales or use tax.

49 (k) The use tax herein imposed shall not apply to the use by a
50 nonresident of this state of a motor vehicle which is registered or licensed

1 under the laws of the state of his residence and is not used in this state more
 2 than a cumulative period of time totaling ninety (90) days in any consecutive
 3 twelve (12) months, and which is not required to be registered or licensed
 4 under the laws of this state.

5 (1) The use tax herein imposed shall not apply to the use of household
 6 goods, personal effects and personally owned vehicles or personally owned
 7 aircraft by a resident of this state, if such articles were acquired by such
 8 person in another state while a resident of that state and primarily for
 9 use outside this state and if such use was actual and substantial, but if an
 10 article was acquired less than three (3) months prior to the time he entered
 11 this state, it will be presumed that the article was acquired for use in this
 12 state and that its use outside this state was not actual and substantial.
 13 For purposes of this subsection, "resident" shall be as defined in section
 14 63-3013 or 63-3013A, Idaho Code.

15 (m) The use tax herein imposed shall not apply to the storage, use
 16 or other consumption of tangible personal property which is or will be
 17 incorporated into real property and which has been donated to and has become
 18 the property of:

19 (1) A nonprofit organization as defined in section 63-36220, Idaho
 20 Code; or

21 (2) The state of Idaho; or

22 (3) Any political subdivision of the state.

23 This exemption applies whether the tangible personal property is
 24 incorporated in real property by the donee, a contractor or subcontractor of
 25 the donee, or any other person.

26 SECTION 10. That Section 63-3638, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 63-3638. SALES TAX -- DISTRIBUTION. All moneys collected under this
 29 chapter, except as may otherwise be required in sections 63-3203 and
 30 63-3709, Idaho Code, shall be distributed by the tax commission as follows:

31 (1) An amount of money shall be distributed to the state refund account
 32 sufficient to pay current refund claims. All refunds authorized under this
 33 chapter by the commission shall be paid through the state refund account, and
 34 those moneys are continuously appropriated.

35 (2) Five million dollars (\$5,000,000) per year is continuously
 36 appropriated and shall be distributed to the permanent building fund,
 37 provided by section 57-1108, Idaho Code.

38 (3) Four million eight hundred thousand dollars (\$4,800,000) per year
 39 is continuously appropriated and shall be distributed to the water pollution
 40 control account established by section 39-3628, Idaho Code.

41 (4) An amount equal to the sum required to be certified by the chairman
 42 of the Idaho housing and finance association to the state tax commission
 43 pursuant to section 67-6211, Idaho Code, in each year is continuously
 44 appropriated and shall be paid to any capital reserve fund, established
 45 by the Idaho housing and finance association pursuant to section 67-6211,
 46 Idaho Code. Such amounts, if any, as may be appropriated hereunder to the
 47 capital reserve fund of the Idaho housing and finance association shall
 48 be repaid for distribution under the provisions of this section, subject
 49 to the provisions of section 67-6215, Idaho Code, by the Idaho housing and

1 finance association, as soon as possible, from any moneys available therefor
2 and in excess of the amounts which the association determines will keep it
3 self-supporting.

4 (5) An amount equal to the sum required by the provisions of sections
5 63-709 and 63-717, Idaho Code, after allowance for the amount appropriated
6 by section 63-718(3), Idaho Code, is continuously appropriated and shall be
7 paid as provided by sections 63-709 and 63-717, Idaho Code.

8 (6) An amount required by the provisions of chapter 53, title 33, Idaho
9 Code.

10 (7) An amount required by the provisions of chapter 87, title 67, Idaho
11 Code.

12 (8) For fiscal year 2011, and each fiscal year thereafter, four
13 million one hundred thousand dollars (\$4,100,000), of which two million
14 two hundred thousand dollars (\$2,200,000) shall be distributed to each
15 of the forty-four (44) counties in equal amounts, and one million nine
16 hundred thousand dollars (\$1,900,000) of which shall be distributed to the
17 forty-four (44) counties in the proportion that the population of the county
18 bears to the population of the state. For fiscal year 2012, and for each
19 fiscal year thereafter, the amount distributed pursuant to this subsection
20 (8), shall be adjusted annually by the tax commission in accordance with the
21 consumer price index for all urban consumers (CPI-U) as published by the
22 U.S. department of labor, bureau of labor statistics, but in no fiscal year
23 shall the total amount allocated for counties under this subsection (8),
24 be less than four million one hundred thousand dollars (\$4,100,000). Each
25 county shall establish a special election fund to which shall be deposited
26 all revenues received from the distribution pursuant to this subsection (8).
27 All such revenues shall be used exclusively to defray the costs associated
28 with conducting elections as required of county clerks by the provisions of
29 section 34-1401, Idaho Code.

30 (9) One dollar (\$1.00) on each application for certificate of title
31 or initial application for registration of a motor vehicle, snowmobile,
32 all-terrain vehicle or other vehicle processed by the county assessor or
33 the Idaho transportation department excepting those applications in which
34 any sales or use taxes due have been previously collected by a retailer,
35 shall be a fee for the services of the assessor of the county or the Idaho
36 transportation department in collecting such taxes, and shall be paid into
37 the current expense fund of the county or state highway account established
38 in section 40-702, Idaho Code.

39 (10) ~~Eleven and five tenths~~ Eight and thirty-six hundredths percent
40 ~~(11.58.36%)~~ is continuously appropriated and shall be distributed to the
41 revenue sharing account which is created in the state treasury, and the
42 moneys in the revenue sharing account will be paid in installments each
43 calendar quarter by the tax commission as follows:

44 (a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the
45 various cities as follows:

46 (i) Fifty percent (50%) of such amount shall be paid to the
47 various cities, and each city shall be entitled to an amount
48 in the proportion that the population of that city bears to the
49 population of all cities within the state; and

- 1 (ii) Fifty percent (50%) of such amount shall be paid to the
2 various cities, and each city shall be entitled to an amount in the
3 proportion that the preceding year's market value for assessment
4 purposes for that city bears to the preceding year's market value
5 for assessment purposes for all cities within the state.
- 6 (b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the
7 various counties as follows:
- 8 (i) One million three hundred twenty thousand dollars
9 (\$1,320,000) annually shall be distributed one forty-fourth
10 (1/44) to each of the various counties; and
- 11 (ii) The balance of such amount shall be paid to the various
12 counties, and each county shall be entitled to an amount in
13 the proportion that the population of that county bears to the
14 population of the state;
- 15 (c) Thirty-five and nine-tenths percent (35.9%) of the amount
16 appropriated in this subsection (10) shall be paid to the several
17 counties for distribution to the cities and counties as follows:
- 18 (i) Each city and county which received a payment under the
19 provisions of section 63-3638(e), Idaho Code, during the fourth
20 quarter of calendar year 1999, shall be entitled to a like amount
21 during succeeding calendar quarters.
- 22 (ii) If the dollar amount of money available under this subsection
23 (10) (c) in any quarter does not equal the amount paid in the fourth
24 quarter of calendar year 1999, each city's and county's payment
25 shall be reduced proportionately.
- 26 (iii) If the dollar amount of money available under this
27 subsection (10) (c) in any quarter exceeds the amount paid in
28 the fourth quarter of calendar year 1999, each city and county
29 shall be entitled to a proportionately increased payment, but such
30 increase shall not exceed one hundred five percent (105%) of the
31 total payment made in the fourth quarter of calendar year 1999.
- 32 (iv) If the dollar amount of money available under this subsection
33 (10) (c) in any quarter exceeds one hundred five percent (105%) of
34 the total payment made in the fourth quarter of calendar year 1999,
35 any amount over and above such one hundred five percent (105%)
36 shall be paid fifty percent (50%) to the various cities in the
37 proportion that the population of the city bears to the population
38 of all cities within the state, and fifty percent (50%) to the
39 various counties in the proportion that the population of a county
40 bears to the population of the state; and
- 41 (d) Seven and seven-tenths percent (7.7%) of the amount appropriated
42 in this subsection (10) shall be paid to the several counties for
43 distribution to special purpose taxing districts as follows:
- 44 (i) Each such district which received a payment under the
45 provisions of section 63-3638(e), Idaho Code, during the fourth
46 quarter of calendar year 1999, shall be entitled to a like amount
47 during succeeding calendar quarters.
- 48 (ii) If the dollar amount of money available under this subsection
49 (10) (d) in any quarter does not equal the amount paid in the

fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (10) (d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (10) (d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1) (e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (10) (d).

(vii) For purposes of this subsection (10) (d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(11) Amounts calculated in accordance with section 2, chapter 356, laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by

1 each district pursuant to this subsection prior to the consolidation. If a
2 taxing district is dissolved or disincorporated, the state tax commission
3 shall continuously distribute to the board of county commissioners an
4 amount equal to the last quarter's distribution prior to dissolution or
5 disincorporation. The board of county commissioners shall determine
6 any redistribution of moneys so received. If a taxing district annexes
7 territory, the distribution of moneys received pursuant to this subsection
8 shall be unaffected. Taxing districts formed after January 1, 2001, are
9 not entitled to a payment under the provisions of this subsection. School
10 districts shall receive an amount determined by multiplying the sum of
11 the year 2000 school district levy minus .004 times the market value on
12 December 31, 2000, in the district of the property exempt from taxation
13 pursuant to section 63-602EE, Idaho Code, provided that the result of these
14 calculations shall not be less than zero (0). The result of these school
15 district calculations shall be further increased by six percent (6%). For
16 purposes of the limitation provided by section 63-802, Idaho Code, moneys
17 received pursuant to this section as property tax replacement for property
18 exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be
19 treated as property tax revenues.

20 (12) Amounts necessary to pay refunds as provided in section 63-3641,
21 Idaho Code, to a developer of a retail complex shall be remitted to the
22 demonstration pilot project fund created in section 63-3641, Idaho Code.

23 (13) Amounts calculated in accordance with subsection (4) of section
24 63-602KK, Idaho Code, for annual distribution to counties and other
25 taxing districts for replacement of property tax on personal property tax
26 exemptions pursuant to subsection (1) of section 63-602KK, Idaho Code,
27 which amounts are continuously appropriated unless the legislature enacts a
28 different appropriation for a particular fiscal year.

29 (14) Any moneys remaining over and above those necessary to meet and
30 reserve for payments under other subsections of this section shall be
31 distributed to the general fund.

32 SECTION 11. An emergency existing therefor, which emergency is hereby
33 declared to exist, Sections 1 through 7 of this act shall be in full force
34 and effect on and after passage and approval, and retroactively to January
35 1, 2010. Sections 8 and 9 shall be in full force and effect on and after July
36 1, 2010. Section 10 shall be in full force and effect on and after August 1,
37 2010.